

APPEAL NO. 020232
FILED MARCH 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 7, 2001. The issue at the hearing was whether the claimant was entitled to supplemental income benefits (SIBs) for the 13th and 14th quarters. The hearing officer determined that the claimant was entitled to those benefits. On January 24, 2002, the hearing officer issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order), covering services from July 1 through December 17, 2001, approving 9.45 hours of the 24.65 hours requested, approving a total of \$1,417.50 of the \$3,697.50 requested. The appellant, the attorney for the claimant, appeals, contending that "all fees were amply justified and reasonable." The attorney asks that the Appeals Panel approve all of the denied fees. The appeal file contains no response from the respondent carrier or the respondent claimant.

DECISION

We reverse and remand for a hearing to determine whether the disapproved items were reasonable and necessary.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney includes with his appeal a copy of his Application for Attorney's Fees (TWCC-152) including his justification text including, but not limited to, a chronological justification of the attorney's activities in connection with the items in the Order. The Attorney Fee Processing System (AFPS) indicates that there was no justification text submitted. The hearing officer entered into AFPS the following log text:

NO JUSTIFICATION PROVIDED FOR ITEMS WHICH EXCEEDED
GUIDELINES. MAY RESUBMIT DISAPPROVED ITEMS WITH
JUSTIFICATION FOR EXCEEDING GUIDELINES.

As the attorney points out, attorney's fees paid by the carrier where the claimant prevails on a quarter of SIBs are not subject to the guidelines. Section 408.147(c); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The hearing officer apparently did not consider the justification text and provides no reasoned justification for disapproving the disputed items, merely using the designation "Ex Guideline/Unreasonabl." As such, we have no basis upon which to determine whether or not the hearing officer abused his discretion in disapproving those items. Texas Workers' Compensation Commission Appeal No. 960158, decided March 5, 1996; Texas Workers' Compensation Commission Appeal No. 970423, decided May 15, 1997. The justification text in the case at hand, while not lengthy, was filed with the application for attorney's fees and, together with it, provides considerable information as to the fees requested. On remand, the hearing officer must consider the application and the justification text in determining whether the

disallowed portion of the requested fees are reasonable and necessary.

We reverse the Order as to the disapproved items and remand for the hearing officer to reconsider the 15.2 hours of requested fees he denied and to determine whether all or any portion of those fees are reasonable and necessary. The hearing officer should provide a reasoned justification for disallowing any item he disapproves. The hearing officer may, at his discretion, hold a hearing on remand or allow the parties to submit and respond to written materials.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Terri Kay Oliver
Appeals Judge